

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1381 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

ONGC RETIRED OFFICERS ASSO

Versus

O N G C

Appearance:

MR Majgaonkar for Petitioners

MR RAJNI H MEHTA for Respondent No. 1

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 07/03/2000

ORAL JUDGEMENT :

The present petition is filed by two petitioners,
one, ONGC Retired Officers' Association and Shri V.G.
Srinivasan, President (as he then was) of petitioner
no.1. The petition is directed against the respondent
Oil & Natural Gas Commission ("the Commission" for
brevity) for excluding the employees who have retired

prior to 1.4.1990 from granting the benefits under superannuation benefit scheme. It is the grievance of the petitioners that the scheme, formulated by the Commission is made applicable only to those employees who retired on 1.4.1991, or thereafter. It is the case of the petitioners that in fact a draft scheme was circulated for eliciting opinion poll by the Directorate of Personnel of the Commission. In that it was mentioned in clause (1) that :

"The scheme would be compulsory for each and every employee of the Commission who came on roll of the Commission on 7th October 1987 or thereafter."

It is also the case of the petitioners that thereafter the scheme with some modifications was again circulated which is at Annexure 'B'. In the modified scheme it was mentioned in subclause (C) of clause 1, under the heading 'Membership' that :

"All regular employees of ONGC are entitled to become member of the scheme.

The scheme would be optional to the present serving officers of the Commission, but not to officers joining on 1st April 1990 or thereafter who will have to compulsorily become member of the scheme and no option in his case would be available to them. Option in case of existing employees once exercised will be final and irrevocable."

It is submitted on behalf of the petitioners that in view of these two schemes, the prayers at para 14 of the petition are required to be granted, whereby it is prayed that direction in the nature of mandamus be issued against the respondent Commission to apply the scheme now known as "ONGC Self Contributions Post Retirement and Death in Service Benefits Scheme", to all its employees. It is also prayed by the petitioners that to the extent the scheme is made applicable compulsorily to the employees who are in service as on 1.4.1991, the same should be declared unconstitutional and that the Commission be directed to make the scheme applicable to all its employees on their exercising option. Mr. Majgaonkar, learned counsel vehemently urged that the action of the respondent Commission of applying the scheme in its present form whereby the scheme is made applicable only to the employees who were on the rolls of the Commission on or after 1.4.1991 is unjust, arbitrary

and therefore, the prayers as prayed for are required to be granted.

2. Mr.R.H. Mehta, the learned advocate for the Commission has invited my attention to the affidavit filed on behalf of the Commission wherein para 9(ii) states that, "the scheme which was circulated in the year 1987 was only a draft scheme and it was, as the title shows, was circulated for eliciting opinion poll". It is also pointed out that it was thereafter with necessary modifications that it was recommended to the Central Govt. for making the scheme in question effective from 1.4.1990. Mr.Mehta has also invited my attention to letter dated 18.9.1991, whereby the Union Ministry of Petroleum and Natural Gas granted its approval to the scheme with a modification so far as applicability of the said scheme is concerned in clause (iii) of the said letter which reads as under :

"The scheme may be made effective from 1.4.1990
subject to the condition that all employees who
retired between 1.4.1990 and 1.4.1991 will be
excluded from the scheme."

Mr.Mehta, learned counsel has submitted that the said modification was made by the Union Government by its letter dated 18.9.1991 , which is already produced on record of this case with an affidavit dated 10.3.1998. Therefore, the petitioners very much knew about the decision being that of the Union Government and if at all that decision was required to be challenged it was open to the petitioners to join the Govt of India as a party respondent to defend its decision. Mr.Mehta has also submitted that the scheme implemented by the Commission is only after approval from the Union Government and the said scheme is implemented as approved by the Union Government and therefore, if at all the decision of modification of date was to be challenged, the same should have been challenged by the petitioners only after joining the Union of India as party respondent in the present petition.

3. Mr.Majgaonkar for the petitioners urged that as regards the action of the respondent Commission of forwarding the scheme to the Union Government vide letter dated 29.3.1991 with a changed date of 1.4.1990 instead of 7.10.1987, no justification is put forward by the Commission.

4. It appears from the aforesaid discussion that the cut off date which is now prescribed for implementation

of the scheme is a decision of the Union Government and if at all that decision is to be challenged by the petitioners, the petitioners ought to have joined the Govt. of India as party respondent so as to enable the Union Government to put forward the justification, if any for prescribing the said date. In absence of the Union Government before this Court, no reliefs can be granted against the Commission as the Commission is only an implementing agency of the decision of the Union Government whereby the Central Government modified the proposal sent by the Commission by letter dated 29.3.1991 in the form of change of date, as stated hereinabove.

Mr.R.H. Mehta, the learned advocate for the Commission submitted that it is observed by the Honourable Supreme Court in the case of All India Reserve Bank Retired Officers Association & others v. Union of India & another, 1991 (6) JT 400, wherein the Honourable the Supreme Court was considering the question of prescribing the cut off date for implementation of pension scheme in substitution of CPF scheme. The Honourable Supreme Court held that :

"The underlying principle is that when the State decides to revise and liberalise an existing pension scheme with a view to augmenting the social security cover granted to pensioners, it cannot ordinarily grant the benefit to a section of the pensioners and deny the same to others by drawing an artificial cut off line which cannot be justified on rational grounds and is wholly unconnected with the object intended to be achieved. But when an employer introduces an entirely new scheme which has no connection with the existing scheme, different considerations enter the decision making process. One such consideration may be the financial implications of the scheme and the extent of capacity of the employer to bear the burden. Keeping in view its capacity to absorb the financial burden that the scheme would throw, the employer would have to decide upon the extent of applicability of the scheme."

5. Mr.Mehta has also pointed out that the present scheme was also the subject matter of a writ petition being W.P. No.1718 of 1996 under Article 226 of the Constitution before the High Court of Mumbai, wherein it was challenged by the petitioners therein that the scheme in question was not having financial viability and equitableness. Therefore, requested for the following

reliefs :

- To quash and set aside the scheme.
- Directions be issued for not implementing the scheme.
- Operation of the scheme should be stayed.
- The respondent be directed to restrain from paying out the said funds in any manner for any purpose.

The High Court of Mumbai was pleased to pass an order on 5.11.1996, which reads as under :

"This petition under Article 226 is filed by some of the employees of Oil & natural Gas Commission (ONGC) challenging the validity of ONGC Self Contributions Post Retirement and Death in Service Benefits Scheme ("Scheme" for short). The main grievance of the petitioners is that the scheme is not financially viable and the entire corpus of the scheme is likely to be wiped out soon leaving the Junior employees in service completely high and dry. The petitioners have therefore, prayed for quashing and setting aside the scheme. In the alternative, they have prayed for a direction against the ONGC not to implement the scheme.

It seems that the scheme was introduced sometime in May 1990 for the officers working in ONGC, although, some 3000 officers did not join the scheme, large majority comprising of nearly 18000 officers have opted for the scheme. so far around 2000 cases of those who have retired/ expired have been settled. Nearly 293 cases of death and/ or total permanent disability while in service the pending for settlement.

In their affidavit in reply ONGC has vehemently denied the petitioners' case that the scheme is not financially viable.

However, during hearing Mr.Dada, learned Additional Solicitor General, appearing for ONGC fairly stated that the Corporation has received actuarial report from M/s K.A. Pandit that the scheme is not viable. Mr.Dada also produced a copy of the report for the perusal of the Court.

The report shows that the scheme is not viable on account of unexpected time in the salary and PAGE change in the formula of D.A. M/s K.A. Pandit have recommended that to make the scheme viable it is necessary to raise fund from the sources available. The fund position should be reviewed especially when there is a change on account of wage negotiation or the long terms recruitment policy. It is recommended that in order to take cases of the fund additional contribution should be raised from the year in which exorbitant salary rise has been given, i.e. 1992 and difference with 12% interest to be paid to the fund. It is also recommended that any difference of annuity cost because of above salary rise and interest payable to LIC for 1992 to date of payment of annuity should be raised in such a way that it does not pose undue problems to the existing members.

On a careful scrutiny of the report, it is clear, that the scheme is not viable unless additional funds are raised from difference sources. Otherwise, the scheme is liable to be scrapped altogether. The question relating to generation of additional funds will have to be considered by negotiations between the Officers' Association and the Corporation. The Bombay Association has appeared through the President, STO (MRBC), ONGC and has agreed for holding negotiations with the Corporation. However, the all India Association, i.e. ASTO (CWC), ONGC has not appeared although served. The central association is hereby directed to hold similar negotiations with the Corporation for the purpose of finding out solution for saving the scheme. In the meanwhile, it is necessary to issue ad interim relief in order to ensure that the fund is not further depleted.

The ONGC is hereby restrained from paying out from the funds of the scheme except in the cases of death or total/ permanent disability while in service, the Corporation is permitted to release the funds to the extent of 50% in such cases."

Thereafter, the said writ petition came to be withdrawn on the basis of Memorandum of Understanding (MoU) submitted before the Honourable High Court of Mumbai. It is clear from the order passed by the Honourable Mumbai

High Court that it was on the basis of modification of the scheme as agreed in the said (MoU), the said writ petition came to be withdrawn giving up challenge to the scheme in question. This is to show that the scheme as was stood, was found to be not viable and therefore, the same was required to be changed under the MoU in question. In that view of the matter it is clear that if the said scheme found to be not viable even for implementing from 1.4.1990 it could not have been found viable for implementing it from any earlier date.

6. Mr.Mehta, learned advocate has also invited the attention of the Court to para 9 of the affidavit in reply at page 71, wherein it is stated in no uncertain terms that respondent no.1 only required to contribute a token amount of Rs.100/-. This is one of the conditions stipulated by the Govt. of India while according NOC to entertain superannuation benefit scheme. He has also invited my attention to the averments made in para 13 at page 73 that if the scheme is made applicable for officers, who retired from 1.4.1990, the scheme would become inequitable and unviable as the number of officers would receive disproportionate benefits compared to very less contribution made by them at the cost of young officers/ members.

7. In the light of the aforesaid discussion, the petition fails. No reliefs as prayed for by the petitioners can be granted. Rule is discharged with no order as to costs.

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